

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VICTOR WASHINGTON,

Plaintiff,

v.

STARBUCKS CORPORATION,

Defendant.

Case No. C08-1144 JCC

REPLY IN SUPPORT OF
MOTION REGARDING
ATTORNEY'S LIEN

Note Date: July 10, 2009

Frank Freed Subit & Thomas LLP ("FFST" or "the firm") filed the pending Motion Regarding Attorney's Lien after learning that Defendant Starbucks Corporation ("Starbucks") transmitted a check for \$120,000.00 in settlement funds directly to Plaintiff Victor Washington. The purpose of the motion was to ensure that the parties respected the firm's security interest in the settlement or underlying action as established by the May 7, 2009 Notice of Attorney Lien and the Amended Notice of Attorney Lien filed on June 1, 2009.

In his opposition to the Motion Regarding Attorney's Lien, Mr. Washington concedes that "[t]he law firm's claim of lien exists and will be respected by Washington and his counsel." Plaintiff's Opposition at 12. Mr. Washington further

REPLY IN SUPPORT OF MOTION
REGARDING ATTORNEY'S LIEN - 1
(Case No. C08-1144 JCC)

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1 concedes that if the Court grants Starbucks's motion to enforce the settlement
2 agreement, the \$31,683.96 in disputed funds should be placed in the registry of the
3 Court until the rights to those funds have been adjudicated. *Id.* Accordingly, Mr.
4 Washington and FFST agree on the appropriate procedure for handling the disputed
5 funds should the settlement agreement be enforced. FFST and Mr. Washington
6 further agree that if the Court denies Starbucks's motion to enforce the settlement
7 agreement, and Mr. Washington does not cash the \$120,000.00 check, no further
8 action on the attorney lien will be required until the underlying litigation is resolved.
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10 In his opposition to FFST's motion, Mr. Washington has also asserted a series
11 of allegations about the nature of his fee agreement with the firm and the
12 reasonableness of the legal fees he incurred. These allegations are entirely baseless
13 and beyond the scope of the current motion.
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15 FFST has always represented Mr. Washington exclusively on an hourly basis.
16 This case is the second employment matter FFST has handled for Mr. Washington.
17 *See* Declaration of Joyce L. Thomas (July 10, 2009) ("Thomas Dec.") at ¶ 2. Ms.
18 Thomas and the firm first represented Mr. Washington in 2006 regarding his
19 employment with a previous employer. All legal services Mr. Washington received in
20 relation to that matter were billed on an hourly basis. *Id.*
21

22 Mr. Washington first consulted Ms. Thomas regarding his employment with
23 Starbucks Corporation in January 2007. *Id.* at ¶ 3. Mr. Washington and Ms. Thomas
24 entered into a Limited Duration Hourly Fee Agreement on May 17, 2007. *See* Exhibit
25 B to Thomas Dec. Under that agreement, Ms. Thomas agreed to provide advice and
26 counsel and to attempt to negotiate an acceptable transfer or separation package for
27

1 Mr. Washington. Thomas Dec. at ¶¶ 4-5. Mr. Washington agreed to pay for these
 2 legal services on an hourly basis and to reimburse the firm for all costs incurred in the
 3 matter. *Id.* Ms. Thomas's billing rate at the time, as stated in the fee agreement, was
 4 \$350 per hour. *Id.*

5
 6 During the next year, Ms. Thomas worked to negotiate an acceptable
 7 resolution of Mr. Washington's claims against Starbucks. Thomas Dec. at ¶ 6. Those
 8 efforts were ultimately unsuccessful. *Id.* Mr. Washington decided to go forward with
 9 litigation and authorized FFST to file this action on his behalf. *Id.* at ¶ 7. The lawsuit
 10 was filed on July 31, 2008. *Id.* Ms. Thomas continued representing Mr. Washington
 11 in litigation on an hourly basis and billed Mr. Washington at her January 2007 hourly
 12 rate of \$350 per hour for all of her legal services. *Id.* at ¶ 8. The fee arrangement
 13 between Mr. Washington and FFST remained unchanged from the time he first
 14 retained the firm in 2006 until he terminated the firm in May 2009.
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16 Washington law did not require FFST to execute a second hourly fee
 17 agreement with Mr. Washington once litigation was filed. Indeed, the Rules of
 18 Professional Conduct do not require that hourly fee agreements be reduced to writing
 19 at all. *See* RPC 1.5 (requiring only contingent fee agreements to be in writing). At all
 20 times during the representation, including after litigation commenced, Mr. Washington
 21 knew FFST was representing him on an hourly basis. From January 2007 through
 22 June 2009, Mr. Washington received detailed monthly billing statements from the firm
 23 reflecting the attorney hours spent on his case and the amount of money he owed in
 24 attorney's fees and costs for the month. Thomas Dec. at ¶ 9 and Exhibit C thereto.
 25 Until he terminated the representation, Mr. Washington paid those hourly bills
 26
 27

1 regularly and promptly without ever raising any questions or concerns regarding the
2 fees he was charged or his ability to pay them. *Id.*

3 The billing records and payment history in this case conclusively demonstrate
4 that FFST always represented Mr. Washington exclusively on an hourly basis.
5 Between January 2007 and July 2008, FFST sent Mr. Washington invoices billing him
6 for legal services on an hourly basis. *See* Exhibit C to Thomas Dec. at 1-39. After
7 litigation was filed on July 31, 2008, the firm followed the exact same billing practice.
8 From August 2008 through June 2009, the firm continued to send Mr. Washington
9 monthly invoices billing him for legal services on an hourly basis. *Id.* at 40-75. Until
10 he terminated the representation in May 2009, Mr. Washington paid part or all of
11 those bills on a monthly basis. The fee arrangement between FFST and Mr.
12 Washington never changed.
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15 At no time did Joyce Thomas or any other attorney at FFST agree to represent
16 Mr. Washington in this litigation on a contingent basis. *Id.* at ¶ 12. Mr. Washington's
17 claim that FFST orally agreed to convert their agreement from an hourly fee to a
18 contingent fee basis is simply untrue. *See* Opp. at 4. Mr. Washington has not
19 produced a written contingent fee agreement because none exists. His claim that Ms.
20 Thomas orally agreed to convert the representation to a contingent fee arrangement is
21 in direct conflict with the Rules of Professional Conduct and the well-documented
22 billing history in this case. RPC 1.5(c)(1) expressly states: "A contingent fee
23 agreement shall be in a writing signed by the client." FFST has never entered into an
24 oral contingent fee agreement with Mr. Washington or any other client. Thomas Dec.
25 at ¶ 13. Furthermore, it defies logic to believe that FFST would bill Mr. Washington
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1 on an hourly basis for ten months after litigation was filed – and Mr. Washington
 2 would pay those hourly bills – if Ms. Thomas had, in fact, agreed to represent him on
 3 a contingent basis.

4 Finally, the legal fees Mr. Washington was charged for the professional
 5 services he received were wholly reasonable. The billing records submitted as Exhibit
 6 C to Ms. Thomas's declaration provide some evidence of the reasonableness of the
 7 fees. FFST is prepared to present a wealth of additional testimonial and documentary
 8 evidence to rebut Mr. Washington's claims regarding the reasonableness of his legal
 9 fees. But because that issue is beyond the scope of the current motion, and may
 10 implicate the attorney-client privilege, the firm will wait to present that evidence in an
 11 appropriate adjudication if the Court deems it necessary.¹
 12

13 CONCLUSION

14 Mr. Washington has represented that he will respect FFST's attorney's lien.
 15 He has also conceded that if the Court grants Starbucks's Motion to Enforce the
 16 Settlement Agreement, the disputed funds claimed in the lien should be deposited into
 17 the registry of the Court until the rights to the \$31,683.96 may be adjudicated. This
 18 issue is not in dispute. Therefore, if the Court grants Starbucks's Motion to Enforce
 19 the Settlement Agreement, FFST requests that the Court order the disputed funds be
 20 placed in the Court's registry until a procedure for adjudicating the lien is established
 21 by the Court.
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 26 ¹ Mr. Washington and his counsel have made a series of statements regarding what occurred during the
 27 April 28, 2009 mediation in this matter. Undersigned counsel believe that the Rules of Professional
 Conduct preclude them from revealing information regarding the mediation and will not comment on
 these statements unless the Court directs them otherwise.

1 RESPECTFULLY SUBMITTED this 10th day of July, 2009.

2 FRANK FREED SUBIT & THOMAS, LLP

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4 By: Joyce L Thomas
5 Joyce L Thomas, WSBA # 21727
6 Jillian M. Cutler, WSBA #39305
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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2009, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Dated: July 10, 2009

/s/ Jill Potter
JILL POTTER